

**BEFORE THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
) SS
COUNTY OF MARION)**

**NADINE LEWIS,
 Complainant,**

DOCKET NO. 01575

vs.

**ROLAND SALK AND ELKHART HOUSE, INC.,
 Respondent.**

FINAL ORDER

Comes now the Indiana Civil Rights Commission and having reviewed the Recommended Findings of Fact, Conclusions of Law and Order and having received no timely objection thereto, hereby adopts said Recommendation, a copy of which is attached.

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 Respondent.

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-captioned cause was scheduled to be heard before the entire membership of the Indiana Civil Rights Commission on August 25, 1977, at 10:00 o'clock am (EST) said hearing to be preceded by a pre-hearing conference scheduled for July 21, 1976, at 8:30 am (EST). Notices of both proceedings were sent to both respondents on June 29, 1977, said notice sent by certified mail, return receipt requested, and were accepted by both respondents on June 29, 1977. Neither respondent appeared either personally or by counsel at the pre-hearing conference. Complainant appeared by counsel and moved that the Presiding Officer recommend to the full Commission that an Order by default be issued pursuant to Ind. Admin. R., and Reg. Sec. (22-9-1-6)-20 based upon respondent's failure to defend. Presiding Officer James Lang recommended that an order by default be issued and his recommendation was accepted by the full Commission on July 22, 1977.

James A. Lang, Commissioner of The Indiana Civil Rights Commission was appointed Hearing Officer and the above cause was scheduled for hearing on damages for September 22, 1977, at 9:30 am, prevailing time. Service of the notice of hearing on damages was effected by the Sheriff on both respondents. Service was also attempted by certified mail.

The hearing on damages convened at 9:48 am, prevailing time on September 22, 1977, the Hearing Officer having waited for the parties to appear. Complainant appeared by counsel at 9:30 am, prevailing time on said date and personally arrived at 10:08 am, prevailing time on said date. Neither respondent was present either personally or by counsel and the Hearing Officer proceeded with the hearing on damages. Having duly considered the evidence of damages submitted by the complainant, and a full record of the above-captioned claim, the Hearing Officer hereby recommends that the Indiana Civil Rights Commission adopt the following recommended findings, conclusions and order:

FINDINGS OF FACT

1. Complainant, Nadine Lewis, is a black female.
2. Elkhart House, Inc., one of the respondents herein, is an Indiana corporation for profit and duly registered with the Secretary of State of Indiana.
3. Roland L. Salk, respondent herein, is the resident agent of Elkhart House, Inc., and has been the resident agent for Elkhart House, Inc., since 1971.
4. Elkhart House, Inc., owned and operated an establishment, the Elkhart House (hotel), located at 500 South Main Street, City of Elkhart, State of Indiana, which offered its goods and services to the general public and employed more than six (6) persons during the years 1971, 1972, 1973, and 1974.
5. Respondent, Roland L. Salk, served as General Manager during the years 1971, 1972, 1973, and 1974. In the capacity as General Manager, respondent Salk made all major decision concerning the operation of the Elkhart House, owned and operated by respondent, Elkhart House Inc.
6. Roland L. Salk has resided at 134 Varsity Drive, City of South Bend, State of Indiana, at all relevant times between January 1, 1977 and September 22, 1977.

7. The issues relating to the merits of the claim filed by complainant, Nadine Lewis, were disposed of in her favor by a default order rendered by the Indiana Civil Rights Commission on July 22, 1977, said Default Order based upon both respondents' failure to appear at a pre-hearing conference scheduled on July 21, 1977.
8. That respondent, Elkhart House, Inc., ceased managing Elkhart House Hotel during the spring of the year 1974.
9. The only evidence as to damages was presented by complainant Nadine Lewis.
10. Complainant, Nadine Lewis, testified that in June, 1971, she was offered employment with respondent, Elkhart House, Inc., said employment to be a full-time position and was to commence on July 6, 1971.
11. Complainant Lewis testified that the wage offered to her in June, 1971 was either One Dollar and Eighty Cents (\$1.80) per hour or One Dollar and Ninety Cents (\$1.90) per hour.
12. Complainant Lewis testified that although she diligently sought alternative employment she did not secure regular full-time employment during the years 1971, 1972, and 1973.
13. Complainant Lewis testified that she secured full-time employment at Miles Laboratories in February, 1974, at a rate of Two Dollars and Twenty Cents (\$2.20) per hour.
14. That complainant Lewis has fully mitigated any damages that may have accrued to her for the period of February 14, 1974 through June 1, 1974, and thus has suffered no monetary loss and can collect no monetary damages from either respondent for this period..
15. That neither respondent appeared in person or by counsel and did not contest complainant Lewis' testimony.

16. That although complaint Lewis testified that she was unable to secure alternative full-time employment until an unspecified date during the month of February, 1974, this Hearing Officer finds that as a matter of fact there was not substantial evidence of probative value, that the complainant sought alternative employment or that the complainant was damaged from June, 1971 through the years 1972, 1973 to February, 1974 as a result of any discrimination by respondents, and therefore, the Hearing Officer finds that as a matter of fact that complainant suffered a loss for seventeen (17) weeks employment beginning July 6, 1971 at the rate of One Dollar and Eighty Cents (\$1.80) an hour for a total loss of One Thousand Two Hundred Twenty-Four Dollars (\$1,224.00).
17. Any conclusion of law which should have been labeled as a finding of fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. The Indiana Civil Rights Commission has jurisdiction over the parties and the matters at issue in the above-captioned cause, I.C. 22-9-1-3 (a) and .C. 22-9-1-3 (h).
2. That a pre-hearing conference was scheduled in this case pursuant to Ind. Admin. R. and Reg. Sec. (22-9-1-6)-29.
3. That both respondents were duly served with a notice of said pre-hearing conference by Certified mail return receipt request, said service pursuant to Ind. Admin. R., and Reg. Sec. (22-9-1-6)-18.
4. That both respondents failed to appear at the pre-hearing conference and thus such failure constituted a "failure to pleas or otherwise defined as provided by these rules", pursuant to Ind. Admin. R. and Reg. Sec. (22-9-1-6)-20.
5. The entry of Order by Default by the Indiana Civil Rights Commission disposed of these issues relating to the merits of the above-captioned complaint in favor of complainant.

6. Respondents were notified of the hearing on damages scheduled for September 22, 1977 at 9:30 am., prevailing time and were served with notice of hearing by the Sheriff of St. Joseph County, Indiana, and said service being made pursuant to Ind. Admin R. and Reg. Secs. (22-9-1-6)-18 (B) and (22-9-1-6)-19 (B).
7. That neither respondent appeared in person or by attorney at the hearing on damages held on September 22, 1977.
8. That inasmuch as the respondents were defaulted for failure to plead or otherwise respond, the only issue before this Hearing Officer is the issue of damages.
9. That the Elkhart House is no longer operated by either of the respondents and therefore, the issue as to affirmative action including but not limited to a cease and desist order, is a moot issue.
10. That respondents' failure to employ complainant after offering complainant employment, was a discriminatory practice and a violation of the Indiana Civil Rights Act.
11. Any finding of fact which should have properly been labeled as a conclusion of law is hereby adopted as such.

RECOMMENDED ORDER

Pursuant to and in accordance with the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED:

1. That within fifteen (15) days following receipt of this order, respondents, Roland L. Salk and Elkhart House, Inc., are jointly and severally liable in damages to complainant for loss of income resulting from their discriminatory practice, in the sum of One thousand Two Hundred Twenty-Four Dollars (\$1,224.00) representing loss of wages to complainant for seventeen (17) weeks beginning the 6th of July, 1971. This

amount is based upon an hourly rate of One Dollar and Eighty Cents (\$1.80) per hour times a forty (40) hour working week and that respondents may deduct there from the applicable federal and state income taxes as well as any social security deductions. Complainant shall be entitled to a legal rate of interest, being eight per cent (8%) per annum from the date said sums are due until said sums are paid.

So recommended this 15th day of March, 1978

Dated: March 15, 1978